

**FROM OPERATION PHOENIX TO FARC-POLITICA (FARC politics)
-BRIEF MEMORIES OF AN UNJUST IMPRISONMENT-**

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"... All political prisoners must be grateful

to their jailers who confirm to them,

by deeds and on their person

the validity of their convictions,

the correctness of their path.

Never is a person

more certain in what they do

when prolonged pain

cannot take their breath away

and defeat them... "

(Spring with a broken corner, excerpt, pg. 162 Mario Benedetti).

Today marks 36 months from the time I was confined in a prison; "arrested" while I was subject to a judicial investigation that is still not over.

I am a woman among more than 7,500 Colombian political prisoners, both men and women, who suffer and resist with dignity the harshness of a judicial system, prisons and a state that denies us and disqualifies us calling us "terrorists" and which seeks to annul us as individuals and break us as social and political activists.

The prelude to this personal nightmare took place the morning of March 1, 2008, when under orders of then President Uribe, Defence Minister Juan Manuel Santos and the generals of the Armed Forces of Colombia unleashed Operation Phoenix on Ecuadorian territory.

Operation Phoenix - WITHOUT TRUTH THERE IS NO RETURN FROM THE ASHES

Operation Phoenix, which combined the participation of Army Special Forces, Police and the Colombian Air Force, with the possible involvement of a third country², would be from that time onwards the cause of a bitter controversy. On one hand are those from the side of the State who consider this operation a feat of "Heroes of the

Nation" that resulted in the elimination of a significant "enemy within" no matter the political, diplomatic and legal cost to the country and that, after all, "the end justifies the means".

On the other hand, there are those who believe that Operation Phoenix was a warmongering act that resulted in a flagrant violation of number of principles of national and international law, including the territorial integrity and sovereignty of another country – Ecuador – of the self-determination of peoples, treaties and bilateral and multilateral agreements on judicial and penal cooperation³; at the national level that such action was contrary to the precepts of the Constitution and criminal law. But it was also contrary to the rules of war, yes, because even war has limits and there is a warrior's code of honour, according to which anything most certainly does NOT go.

The military objective of Operation Phoenix

In military terms, Operation Phoenix sought to terminate what was considered a "high value target". Military intelligence had located on the Colombian-Ecuadorian border, more precisely in Angostura, in the Province of Sucumbíos in Ecuador – the camp of the Revolutionary Armed Forces of Colombia, FARC, which would meet this objective: the insurgent leader and member of the Secretariat of FARC, Raul Reyes.

Operation Phoenix then took place. First came a phase of softening of the terrain. Never mind that this goal lay beyond the Colombian border nor that it had no authorization from the Ecuadorian government headed by President Rafael Correa or the judicial authorities of that country to conduct the raid.

The Colombian Air Force bombarded the encampment located in Ecuador with all its firepower. Then came the landing of the members of the Police Special Forces and the Colombian army to inspect and comb the bombed area, confirm their "high value target" and seize selectively, again without the authorization of competent judicial authority in Ecuador or Colombia, material evidence while at the same time altering the scene of the crime.

In Operation Phoenix FARC guerrilla leader Raul Reyes and at least 24 other people, civilians and rebel fighters among them, died violently. Among the civilians killed were 4 Mexican students⁴ and an Ecuadorian citizen⁵. Among the known survivors were a Mexican student and two wounded guerrillas⁶.

Two of the bodies of interest to the Colombian armed forces, that of Raul Reyes and another who they believed was Julián Conrado were illegally removed from site and transported to Colombia without complying with the established protocols for the removal of the deceased. Images of the bodies – a war trophy – were presented in grotesque form in the media.

Even today the real cause of the death of FARC leader Raul Reyes is not known. His body was never released to his family. Today he counts among the more than 50,000 disappeared in Colombia.

The other body, turned out to be the Ecuadorian citizen Franklin Guillermo Aisalla Molina and not that of the guerrilla Julián Conrado. Once identified his body was repatriated to Ecuador. A lawsuit filed is now pending before the Commission on Human Rights against the Colombian state by the Ecuadorian government for the killing; the extrajudicial execution of this citizen⁷.

THE SO-CALLED FARC POLITICS

The other component of Operation Phoenix took shape at the political and legal level. In 2008, the para-politics scandal, which compromised a large number of members of the political class mostly associated with the Uribe government, was at its peak. To lay a smokescreen on this issue, the government fabricated what would become known as FARC-POLITICA – FARC politics. It was based on supposed evidence – material (computers, removable hard drives and USB sticks) – illegally obtained by members of the armed forces who participated on the raid the camp of Raul Reyes in Ecuador.

This evidence was collected in an arbitrary and illegal way by military personnel and police who, contrary to what some officials of the current and former government say, had no judicial function as police. This was stolen in fact, in another country without the express authorization of the judicial authorities of Ecuador, affecting the scene of the crime and violating international protocols in collecting material evidence on foreign soil.

It was the then police major Camilo Ernesto Alvarez Ochoa⁸ who, as commander of the Group Against High-Value Targets, Special Operations Command (COPES) – one of those who collected the material evidence– illegally stole and, as first respondent in the "chain of custody", transported the aforementioned material to Colombia.

Back in Colombia, in the municipality of Puerto Asis, Putumayo, on that same March 1, 2008, major Alvarez presented the material evidence to the then police captain of the Central Directorate of the Judicial Police and Intelligence (DIJIN), Ronald Hayden Coy Ortiz, who from that time until March 3, would serve as the second respondent of the hardware and its "chain of custody".

Captain Coy, without being a computer expert, from 1 to March 3, 2008, manipulated the said physical evidence without following established protocols for treating it. Without any expertise in information technology for creating the "mirroring" necessary for the analysis of information, he directly accessed the files, which under oath he later said were not emails but Word files (documents)⁹, and which he additionally opened, read and copied to his personal computer. And he duly sent copies of them, considering them important to the "National Security", to the Colombian Defence Ministry, all without obtaining a warrant from any competent authority.

The Colombian Defence Ministry, in turn, selectively leaked some of these documents to the media, in violation of summary discretion regarding the supposed prime evidence that would be used during the so-called FARC-politics.

Only on March 3, 2008, did Captain Coy present the "evidence" in the city of Bogota, to major Freddy Bautista Garcia of the National Police, then head of the Computer Crimes Taskforce of DIJIN. It was major Bautista, who after processing the said physical evidence and first creating the "mirror copy" of it with his team of experts, who suggested that INTERPOL¹⁰ should certify the procedure to validate the test.

THE BEGINNING OF A NIGHTMARE WITHOUT END

With the fury of the Operation Phoenix still lighting their faces, in May 2008 the then Prosecutor General Mario Iguarán, along with Defense Minister Juan Manuel Santos, appeared before the media to publicly announce the opening of a judicial investigation into Colombian citizens and foreign nationals under the so-called FARC-politics, a process built on the basis of the information allegedly obtained from the electronic equipment of Raul Reyes during Operation Phoenix.

To my surprise, I heard my name on the lips of prosecutor Iguarán next to those of renowned personalities from politics, academia and journalism. Among those mentioned were Polo Democrático Alternativo [Democratic Pole] congress members Gloria Ines Ramirez and Wilson Borja, the then Liberal Party Senator Piedad Cordoba, a former minister Álvaro Leyva Duran, journalists Carlos Lozano Guillen, William Parra and Lazaro Viveros, the American academic James Jones and the Venezuelan parliamentarian Amilcar Figueroa. Over time this list would be expanded with new names. The common factor among those who were included in this line was the commitment taken up in the different areas of work of each one of us, some of us from the political opposition, to the defence of human rights, the search for scenarios of peace and humanitarian accords.

After this statement came moments of anxiety for my family and I. My life until then had passed between my professional work as a sociologist, my commitment to defending human rights, women's and labour rights, my membership in the left as a political option¹¹; my academic pursuits in the Masters in Political Studies at the National University of Colombia (I was preparing graduate thesis), and raising my children (4 and 15 years) as a single mother and head of my family. It had been radically changed, but not in fundamental matters.

Faced with the impending trial I started to seek legal assistance to take up my defence.

On August 8, 2008, while reading news online there was one item that caught my complete attention – it was regarding the arrest warrant issued against me. Hours later my home was raided and I was led into the cells of the DIJIN and then to the Women's Prison in Bogotá where I remain still, 36 months later, with the status of CHARGED waiting for justice to be done in my case and a clear abuse of pre-trial detention.

In the raid, heavily armed police (DIJIN) participated and succeeded in intimidating my elderly mother and my little children. At the site, they seized documents,

including some belonging to my mother and children, which are among the evidence being used against me.

Leading the raid and "capture" was the same captain of the DIJIN, Ronald Hayden Coy Ortiz, who had participated in Operation Phoenix. He sarcastically said to me among other things, it would make me famous, nationally and internationally, while other police filmed everything around me, including my family members and myself from all angles. There was a moment that made me curious when the police cameraperson was ordered from the place in an urgent tone. A few minutes later, while the raid was still in progress, images of the operation were transmitted on television. During this the police paused to watch the media spectacle with their chest puffed out by the "positive" result.

With my detention the process of the FARC-politics began. It is a political rather than legal process, which seems to languish now because of the arbitrariness and illegality on which it was built.

On 11 August 2008, while still isolated in the cells of the DIJIN, I was taken before the anti-terrorism prosecutor number 19, Nancy Esperanza Pardo Bonilla. I would find out the reasons why I was being linked to the process of FARC-politics and the charges made against me.

Before returning to the prosecutor's cells, some journalists tried to get a statement from me. Stuck in my memory is the first question a journalist put to me, "Is it true that you were the mistress of Raul Reyes?" I looked at her and replied, "That's not true and this type of malicious slander violates my dignity as a woman and a human being." I do not really know what offended me more, that the public was being subjected to a falsehood that left a lasting mark on my honour, or knowing that I was being used as cannon fodder by those from "military intelligence" who just wanted to smear the image the insurgent leader.

Finally during the questioning, the prosecutor laid charges of rebellion and managing resources for terrorist purposes against me, based on the alleged information obtained from the computing devices of the late leader of FARC, Raul Reyes. Charges I did not accept and consciously I prepared to subject myself to a trial to prove my innocence. The prosecutor then decided to issue a security measure against me by placing me in a prison facility. It was the first time I was to be denied the benefit of home detention despite having fully demonstrated my status as a single mother. Later I would be denied the benefit a further 9 times, being considered a "danger to society" – something that does not happen to white collar criminals who are granted this benefit without any obstacle.

On 14 August 2008, I was then sent to the Bogotá women's prison – "El Buen Pastor" – wing 6, which is the wing where most of the women political prisoners are held. Thus I became the first Colombian and the only woman deprived of their freedom under the so-called FARC-politics.

OTHER ILLEGAL PROCESSES

From the time I was linked to illegal evidence – the prosecution of the FARC-politics – I was subjected to a media storm in which I was attributed as having “romantic ties” with the late leader of FARC, Raul Reyes; to having a string of responsibilities that I never had. This situation affected not only my honour and my reputation but has also triggered instances of degrading treatment, insults and even death threats against me with resulting security problems for my family and myself.

In jail, the political prisoners must carry the stigma of the “crime” we have foisted on us. Rebellion gives us a “highly dangerous” profile; we are considered the “enemy within”, except that we are behind bars. In these circumstances, my continued commitment to the defence of human rights, including those of my new comrades in prison has led to me being singled out and persecuted by the prison authorities, INPEC¹².

In June 2011, as a result of that singling out, I was transferred within the same prison from wing 6 to wing 7, where I am isolated from the rest of my fellow political prisoners and subjected to enhanced security measures.

Besides being linked to a jury trial on the basis of illegal evidence, with the consequent arbitrary detention, the process against me has been attended by flagrant irregularities from the preliminary stage to this point:

- The "crime" of rebellion was also attributed to me, which is a political crime and the jurisdiction of regular courts, while the crime of resource management for terrorist purposes, is a non-political crime and subject of specialized judicial processes.

It has been a strategy of prosecutors to charge political opponents with crimes associated with terrorism, together the "crime" of rebellion, in order to aggravate the judicial situation with long sentences, increase the time required for the development of trials and impede access to legal benefits for the accused and convicted.

On account of this strategy I have been denied home detention repeatedly. I was subjected to preventive detention, which is an extraordinary measure that has been extended over the period for the conduct of the trial.

- After prosecutor 19 issued the indictment against me and it became final on April 8, 2009 the public hearing and preliminary hearing before trial began under the jurisdiction of the Ninth Criminal Court of the Specialized Circuit of Bogotá. During the preliminary hearing, my defence requested access to all the "Prime Evidence" evidence, i.e. files obtained in Operation Phoenix, but this request was denied. Both judge and prosecutor allowed access only to summaries of the files that were considered directly related to me. Thus the procedural unity of everyone linked to the process of FARC-politics was broken, those for whom the "Prime evidence" was precisely those files obtained in Operation Phoenix.

In this way those linked to the aforementioned process were prevented from taking up a collective defence. The investigation was individualised for each of us and we were allowed to see only fractions of the "Prime evidence". This seriously affected the protection of due process and fair trial.

- By being subjected to specialized justice, trial-times in the process of public hearing have been long and have had interruptions. To this point it has been 24 months from the start of the public hearing and 32 months since my "preventative detention" and this stage it has not been completed despite the fact I have the right to my freedom due to expiration of terms.

On April 11, 2011 we requested my freedom under expiration of terms, but on April 13 the Ninth Judge of the Criminal Circuit denied it, on the basis that the public hearing has not been terminated for "just and reasonable cause," because the defence had requested the taking of evidence abroad, and in the meantime I would be ensured due process.

In the face of this legal absurdity, we filed appeals and a writ of Habeas Corpus¹³ to demand my release for expiration of terms, but both the Superior Court of Bogota, who learned of the appeal, and the judge considering the Habeas Corpus refused to grant immediate release.

- On May 18, 2011, the Supreme Court of Justice, Criminal Division, issued a self-inhibiting writ¹⁴ in the case of former congressman linked to the process of FARC-politics. With this order, the Court held that items of physical evidence obtained in Operation Phoenix, which had been used as evidence in the case against former congressman Wilson Borja are illegal and that in law they cannot be used in the case Borja nor any other case as they have no legal validity.

On August 1, 2011, the Criminal Chamber of the Supreme Court of Justice unanimously upheld the ruling handed down on May 18, 2011 declaring illegal material evidence obtained in Operation Phoenix and the inadmissibility of this in any judicial proceeding as evidence.

Based on that ruling, Professor Miguel Angel Beltran was released on June 3, 2011. Professor Beltran had also been linked to the process of FARC-politics and remained unjustly deprived of freedom for 2 years. The extradition to Colombia of communist leader Manuel Olate was stopped and he was able to clarify his legal situation in his country.

- For his part, based on the ruling of the Supreme Court, my defence lawyer requested in July 2011 a Control of Legality before Judge 9 of the Specialised Criminal Circuit, Danae Hinestroza Rengifo and requested my freedom for being arbitrarily detained on the basis of illegal evidence. The trial judge once again rejected the defence request.

-On August 1, 2011 we resubmitted our writ of habeas corpus in consideration of the fact that not only had I been deprived of my freedom arbitrarily and illegally but

there had also been an extension of the illegal detention. We based our request on the ruling of the Supreme Court of Justice, Criminal Chamber, on May 18, 2011 and its ratification of August 1, 2011 in declaring void for lack of legal validity, "evidence" obtained illegally in Operation Phoenix and which has been used against me.

Inexplicably, the judge responsible for hearing the Habeas Corpus, Labour Circuit Judge 30 of Bogotá, Mario Alfonso Araujo Monroi denied as "inappropriate" our petition based on spurious legal arguments.

It is evident that during these 36 months, my "preventive detention" in a prison facility has violated many rights: the presumption of innocence, due process, to self-defence, procedural guarantees and my freedom. It has caused me irreparable damage in material and moral terms. Therefore through my defence, we have requested interim measures of protection to the Inter-American Commission on Human Rights.

The truth is that three years after the controversial Operation Phoenix, the monster of the FARC-politics languishes. Fortunately, since many people unfairly linked to this process have been acquitted, only Joaquin Becerra and I are still deprived of our freedom.

Meanwhile my days are spent in a high security cell isolated from the rest of my fellow political prisoners, but with dignity, high morale and standing tall.

We continue to fight for the freedom of all Colombian political prisoners.

Someday it will be possible, and I will continue working freely once more for a truly democratic country enjoying political inclusion, social justice and peace.

These 36 months of unjust incarceration have been less torturous thanks to the invaluable solidarity and expressions of affection of many, many comrades and many others who, even without knowing them have become sensitized to my case and that of more than 7500 Colombian political prisoners.

To all the trade unions, activists for human rights, peace and social justice, the alternative media, the opposition political parties, the democratic lawyers and the parliamentarians who come together from different latitudes of the globe, in the campaign to free Colombia's political prisoners, my gratitude and affection.

Special thanks to the comrades of the International Network in Solidarity with Colombia's Political Prisoners (INSPP), to the Solidarity Campaign for Political Prisoners in Canada, Justice for Colombia in the UK, the circles of Solidarity for Colombia and Peace and Justice for Colombia in Australia, the Alliance for Global Justice in the United States, the Solidarity Campaign for Colombian Political Prisoners, "Building Bridges of Solidarity" in Cuba, the Bolivarian Agency of Humanitarian Affairs, Homeland is Solidarity in Venezuela, the Campaign for Freedom for Colombian Political Prisoners in France; the Free the Political Prisoners

campaign "Beyond the Walls", the Ties of Dignity Foundation, the Eduardo Umaña Mendoza Legal Brigade, the Permanent Committee for the Defence of Human Rights in Colombia.

To the lawyers who have contributed to my defence Matyas Eduardo Camargo, Gustavo Gallardo, Santiago Ortiz and July Henriquez.

To my friend and comrade Raul Arango, always supportive of the El Buen Pastor political prisoners, to Niki, wherever you are.

To my comrade and friend Nestor Montilla who always stood by me while he was alive and who is still with me.

To my small but unconditionally loving family,

To each and every one of you, thank you very much and a fraternal embrace.

LILIANY OBANDO, political prisoner; survivor of the genocide against the Patriotic Union.

Women's Prison "El Buen Pastor", Bogota, AUGUST 8, 2011.

NOTES:

¹ Political prisoner, who survived the genocide against the Patriotic Union; Sociologist, defender of human rights, of women's and workers' rights.

² "The government of Ecuador... argues that according to the remnants of the bombs found in the encampment, they require advanced launching technology of the sort the Colombian Air Force doesn't possess." Report by the Organisation of American States, OAS commission that visited Ecuador and Colombia. Twenty-fifth Meeting of Consultation of Ministers of Foreign Affairs, March 17, 2008, Washington, pg. 7

³ Colombia is a State member to the Organization of American States OAS, as such it approved the Inter American Convention on Mutual Assistance in Criminal Matters, signed at Nassau, Bahamas on May 23, 1992 and the optional protocol to the convention on Criminal mutual assistance adopted in Managua, Nicaragua on June 11, 1998. Act 636 of 2001. Colombia also approved the agreement on judicial cooperation and mutual assistance in criminal matters between the Republic of Colombia and the Republic of Ecuador, signed at Santa Fe de Bogota, DC, December 18, 1996. Act 519 of 1999.

⁴ Verónica Natalia Vázquez Ramírez, Fernando Franco Delgado, Soren Ulises Aviles, Juan Gonzalez del Castillo, students from the Autonomous University of Mexico UNAM.

⁵ Franklin Guillermo Aisalla Molina

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- ⁶ Martha Perez and Diana Gonzales, FARC guerrillas and Lucia Morett Alvarez, found by the Ecuadorian military.
- ⁷ The Ecuadorian state accused the Colombian state for the homicide "extrajudicial execution" of Franklin Aisalla before the Inter American Commission on Human Rights. According to the Ecuadorian state, Aisalla was beaten to death with a rifle used to smash his skull.
- ⁸ Today an investigation is being conducted in Ecuador against the high command of the Colombian Armed Forces who participated in Operation Phoenix, including then police major Camilo Ernesto Alvarez Ochoa, commander of the Group of High Value Targets; Special Operations Command (COPES).
- ⁹ The then captain of the National Police, DIJIN, Ronald Hayden Coy Ortiz who was custodian of the physical evidence obtained in Operation Phoenix declared under oath that those files were not emails but Word documents.
- ¹⁰ According to the INTERPOL report on the validity of the procedures used in the treatment of devices obtained in Operation Phoenix of 1 to March 3, 2008, about 48,000 files were handled without full observance of the protocols for this purpose.
- ¹¹ A state like the Colombian one that proclaims itself democratic and a "social state of law" must ensure the inclusion and participation of the political opposition.
- ¹² The Penitentiaries and Prisons Institute
- ¹³ A fundamental right and constitutional action, article 30 of the National Constitution.
- ¹⁴ According to Article 327 of the Code of Criminal Procedure Law 600 of 2000 "... it becomes imperative to issue an inhibitory decision when there has been no such behaviour, is atypical, is credited a defence of causal responsibility, or criminal proceedings are not legally viable" ... page 3. Supreme Court, Criminal Court of Cassation, Bogotá, DC May 18, 2011.

NB: Translation to English from its Spanish original by the INSPP team.